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9  
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12 IN THE UNITED STATES DISTRICT COURT

13 OF THE

14 NORTHERN MARIANA ISLANDS

15 UNITED STATES OF AMERICA,

16 Criminal Case No. 07-00019

17 Plaintiff,

18 v.

19 SAMUEL RAYBURN,

20 Defendant.

**DEFENDANT'S PROPOSED  
JURY INSTRUCTIONS**

21 COMES NOW Defendant, Samuel Rayburn, by and through appointed  
22 counsel of record, Danilo T. Aguilar, and hereby submits his proposed jury  
23 instructions.

24 Respectfully submitted this 30<sup>th</sup> day of August, 2007.

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DANILO T. AGUILAR, F0198  
Attorney for Defendant  
Samuel Rayburn

**JURY INSTRUCTION NO. \_\_\_\_\_**

**DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**CHARGE AGAINST DEFENDANT NOT  
EVIDENCE—PRESUMPTION OF  
INNOCENCE—BURDEN OF PROOF**

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**DEFENDANT'S DECISION NOT TO TESTIFY**

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**REASONABLE DOUBT—DEFINED**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**WHAT IS EVIDENCE**

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**WHAT IS NOT EVIDENCE**

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**EVIDENCE OF OTHER ACTS OF DEFENDANT OR ACTS  
AND STATEMENTS OF OTHERS**

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**STATEMENTS BY DEFENDANT**

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**OPINION EVIDENCE, EXPERT WITNESS**

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES—**

**IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

You have heard testimony from CARLOS TORRES, a witness who will receive favorable treatment from the CNMI government for his cooperation in connection with this case.

For this reason, in evaluating the testimony of CARLOS TORRES, you should consider the extent to which or whether Mr. Torres' testimony may have been influenced by this factor. In addition, you should examine testimony of Mr. Torres with greater caution than that of other witnesses.

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**ACTIVITIES NOT CHARGED**

The defendant is on trial only for the crimes charged in the indictment, not for any other activities.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**SEPARATE CONSIDERATION OF MULTIPLE COUNTS—  
SINGLE DEFENDANT**

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**EYEWITNESS IDENTIFICATION**

In any criminal case, the government must prove beyond a reasonable doubt that the defendant was the perpetrator of the crimes alleged.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may take into account the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also take into account:

1. the capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation;
2. whether the identification was the product of the eyewitness' own recollection or was the result of subsequent influence or suggestiveness;
3. any inconsistent identifications made by the eyewitness;
4. whether the witness had known or observed the offender at earlier times; and
5. the totality of circumstances surrounding the eyewitness' identification.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**WILLFULLY (Defined)**

Willfulness requires that an act be done knowingly and intentionally, not through ignorance, mistake or accident.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**KNOWINGLY — DEFINED**

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

**JURY INSTRUCTION NO.\_\_\_\_\_**

**DIMINISHED CAPACITY**

You may consider evidence of an abnormal mental condition in deciding whether the government has proved beyond a reasonable doubt that the defendant acted with the intent to commit possession of methamphetamine, in a form commonly known as "ice" with intent to distribute, as charged in Count 2 of the indictment.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**ALIBI**

Evidence has been introduced that the defendant was not present at the time and place of the commission of the crime charged in the indictment. The government has the burden of proving beyond a reasonable doubt the defendant's presence at that time and place.

If, after consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed, you must find the defendant not guilty.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**DUTY TO DELIBERATE**

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**CONSIDERATION OF EVIDENCE**

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**MERE PRESENCE**

Mere presence at the scene of a crime or mere knowledge that a crime is being committed is not sufficient to establish that the defendant committed the crime of Distribution and Possession with Intent to Distribute a Controlled Substance, unless you find that the defendant was a participant and not merely a knowing spectator. The defendant's presence may be considered by the jury along with other evidence in the case.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**USE OF NOTES**

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**JURY CONSIDERATION OF PUNISHMENT**

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**VERDICT FORM**

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**COMMUNICATION WITH COURT**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**CONSPIRACY—ELEMENTS**

The defendant is charged in Count One of the indictment with conspiring to Possess with Intent to Distribute and To Distribute a Controlled Substance, in violation of Section 846 of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about May 25, 2006, and ending on or about May 30, 2006 there was an agreement between two or more persons to commit at least one crime as charged in the indictment; and

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

I shall discuss with you briefly the law relating to each of these elements.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest,

acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

**JURY INSTRUCTION NO. \_\_\_\_\_****CONSPIRACY—KNOWING OF AND ASSOCIATION WITH OTHER CONSPIRATORS**

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if it is proved beyond a reasonable doubt that:

- (1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;
- (2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired; and
- (3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is no defense that a person's participation in a conspiracy was minor or for a short period of time.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**MULTIPLE CONSPIRACIES**

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that the defendant was not a member of the charged conspiracy, then you must find the defendant not guilty, even though the defendant may have been a member of some other conspiracy.

**JURY INSTRUCTION NO. \_\_\_\_\_**

**CONSPIRACY—*PINKERTON* CHARGE**

A conspiracy is a kind of criminal partnership—an agreement between two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful.

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed the crime. Before you may consider the statements or acts of a co-conspirator, you must first determine whether the acts or statements were made during the existence of and in furtherance of an unlawful scheme, and whether any offense was one which could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

Therefore, you may find the defendant guilty of Conspiracy to Possess with Intent to Distribute and To Distribute a Controlled Substance as charged in Count One of the indictment if the government has proved each of the following elements beyond a reasonable doubt:

1. a person named in Count One of the indictment committed the crime of Possession with Intent to Distribute and To Distribute a Controlled

Substance as alleged in that count;

2. the person was a member of the conspiracy charged in Count One of the indictment;
3. the person committed the crime of Possession with Intent to Distribute and To Distribute a Controlled Substance in furtherance of the conspiracy;
4. the defendant was a member of the same conspiracy at the time the offense charged in Count One was committed; and
5. the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

Substance as alleged in that count;

2. the person was a member of the conspiracy charged in Count One of the indictment;
3. the person committed the crime of Possession with Intent to Distribute and To Distribute a Controlled Substance in furtherance of the conspiracy;
4. the defendant was a member of the same conspiracy at the time the offense charged in Count One was committed; and
5. the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

**JURY INSTRUCTION NO. \_\_\_\_\_****CONTROLLED SUBSTANCE—POSSESSION WITH INTENT TO  
DISTRIBUTE (21 U.S.C. § 841(a)(1))**

The defendant is charged in Count 2 of the indictment with possession of methamphetamine, in a form commonly known as “ice” with intent to distribute in violation of Section 841(a)(1) of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed methamphetamine, in a form commonly known as “ice” in a measurable or detectable amount; and Second, the defendant possessed it with the intent to deliver it to another person. It does not matter whether the defendant knew that the substance was methamphetamine. It is sufficient that the defendant knew that it was some kind of a prohibited drug. To “possess with intent to distribute” means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

*In order for the defendant to be found guilty of the charge in Count 2 of the indictment, the government is required to prove the amount or quantity of methamphetamine as charged in the indictment.*

**JURY INSTRUCTION NO. \_\_\_\_\_**

**DETERMINING AMOUNT OF CONTROLLED SUBSTANCE**

If you find the defendant guilty of either the charge in Count 1 and/or Count 2 of the indictment, you are then to determine the net weight of methamphetamine for each charge. Your decision as to the net weight must be unanimous and must be beyond a reasonable doubt.

The term "net weight" means the weight of the methamphetamine without any packaging material.

The government does not have to prove that the defendant knew the exact quantity of methamphetamine.